IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20391 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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RAHIMUNNISA MOHEMMED ALI SAIYED - Petitioner(s)
Versus
AHMEDABAD MUNICIPAL CORPORATION - Respondent(s)

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Appearance :
MR MA KHARADI for the Petitioner
MR SATYAM Y CHHAYA for the Respondent

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/03/2006

ORAL JUDGMENT

1. Rule. Mr. Satyam Chhaya, learned Advocate waives notice of Rule on behalf of the respondent. At the joint request of the learned Advocates appearing for the parties, the petition is taken up for final disposal today.

2. The petitioner is mother of Shri Asif Ali Mohemmed Ali Saiyed, who was working as a Senior Clerk with the respondent. He joined the services in the respondent-Corporation in the year 1978. While still in service he died on 21.11.1994. It is the case of the petitioner that her son had opted for pension scheme when the same was applicable to the employees of the respondent. It is the case of the petitioner that by virtue of Government Resolution dated 19.08.2002, mother and father are also included in the definition of term “family” for the purpose of grant of family pension pursuant to Government Resolution dated 20.01.1998. The petitioner, therefore, applied for being granted family pension pursuant to the said modification in the Government Resolution. The petitioner made such application on 09.03.2004 and thereafter also. Her request was however, turned down by the Municipal Commissioner by a communication dated 10.03.2005. In the said communication, it was stated that considering the material available on record, another brother of the deceased employee was working in the Accounts Department and names of mother and father are shown in the LTC form of the said brother, which means that at the time of death of the employee of the Corporation, the petitioner was not dependent on the

deceased and the petitioner therefore, cannot get benefit of family pension.

3. With respect to question of the deceased son of the petitioner Asif Ali Mahemud Ali Saiyed having opted for pension scheme, there does not appear to be much dispute. Though not stated in so many words by the respondent in the correspondence, in the communication dated 10.03.2005, it clearly emerges that the deceased employee had opted for pension scheme. His option for joining G.P.F. account is significant. Equally significant is the fact that, after the introduction of the pension scheme, Employer made no contribution to the Provident Fund account of the deceased employee. This would establish that the deceased son of the petitioner had applied for being covered by the pension scheme. In fact the respondent had also not turned down the request of the petitioner for granting family pension on the ground that her son was covered by C.P.F. scheme and not under the pension scheme. In that view of the matter, the petitioner would have a right to make an application for considering her case for grant of family pension pursuant to enlargement of definition of term family as provided in the Government Resolution dated 19.08.2002 issued by

the State Government.

4. A copy of the Government Resolution dated 19.08.2002 is produced by the petitioner at Annexure – B. The said Resolution clearly provides that the term “family” for the purpose of family pension scheme would include “mother and father”. The entitlement of mother or father to receive family pension however, depends on fulfillment of certain conditions laid down in the said Government Resolution. Condition No. 6 in Para 2 of the said Government Resolution provides that the pension sanctioning authority shall have to verify whether on the date of death of an employee, mother or father as the case may be was entirely dependent on the said employee and that there is no other claimant to the family pension. It may also be noted that the benefits of the said Government Resolution are to be made applicable with effect from 01.01.1998, even in case of employees, who died before that date [condition No. 2 (5)].

5. In view of the above requirements, I find it necessary that the respondent should consider the case of the petitioner for being granted family pension afresh and to ascertain whether she fulfills all conditions for

being granted family pension including condition No.6 in Para 2 of the Government Resolution dated 19.08.2002.

6. The case of the petitioner is that she was solely and entirely dependent upon her deceased son at the time of his death. The respondent had placed reliance on certain documentary evidence to hold that the petitioner does not fulfill the said conditions. It would be open for the petitioner to produce necessary documentary evidence in support of her contentions in this regard. The respondent shall examine the case of the petitioner afresh on the basis of such additional evidence and other material available on record. For that purpose, the petitioner shall make a representation along with necessary documentary evidence within a period of one week from today. If such a representation is received within the time so prescribed, the respondent shall take fresh decision regarding the request of the petitioner for being granted family pension within a period of two months from the date of its receipt, unmindful of its communication dated 10.03.2005.

7. In the result, the petition succeeds to the above extent. Rule is made absolute accordingly. No order as to

costs. Direct service is permitted.

[Akil Kureshi, J.]

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